

BEFORE THE PERSONNEL APPEALS BOARD
STATE OF WASHINGTON

JOE NEAL,
Appellant,
v.
DEPARTMENT OF CORRECTIONS,
Respondent.

) Case No. RED-04-0022
)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD
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I. INTRODUCTION

1.1 Hearing. This appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the Department of Labor & Industries, in Kennewick, Washington, on March 11, 2005.

1.2 Appearances. Appellant Joe Neal was present and was represented by Gregory Rhodes, of Parr, Younglove, Lyman & Coker, P.L.L.C. Rachelle Wills, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 Nature of Appeal. This is an appeal from a disciplinary sanction of reduction in salary for neglect of duty and violation of agency policy for failing to provide medical documentation as required by Appellant's medical verification requirement.

II. FINDINGS OF FACT

2.1 Appellant is a Correctional Officer 2 and permanent employee for Respondent Department of Corrections (DOC). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 8, 2004.

2.2 Appellant has worked as a Correctional Officer 2 at the Tri-Cities Work/Training Release since approximately January 2000. Appellant's Employee Development and Performance Plans from July 2001 through June 2003 addressed Appellant's need to work on unscheduled leave usage.

2.3 In September 2002, Regional Administrator Marjorie Littrell placed Appellant on Medical Verification Requirement.

2.4 DOC has adopted Policy Directive 830.150, Unscheduled Leave, which states in part:

IV. Medical Verification

...

- D. Employees placed on medical verification shall obtain a written medical certificate from a physician/physician assistant/licensed mental health professional whenever reporting absent from work due to personal illness/injury, illness/injury of relatives or illness/injury of household members. Such certification shall be . . . provided on the first day the employee returns to work.

...

In addition, the policy, under Medical Verification, subsection C (6) states, "[n]otification that leave used in lieu of sick leave (i.e., compensatory time, vacation leave, and/or leave without pay) requires the same type of documentation." The policy, however, does not require medical documentation for absences that are not related to illness or injury.

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2 2.5 By letter dated September 6, 2002, Ms. Littrell directed Appellant to provide medical
3 documentation each time he was absent from work “due to personal, family or household member
4 illness/injury,” as required by policy. Appellant complied with the medical verification
5 requirement from September 2002 through the time of his alleged misconduct in November 2003.

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7 2.6 On November 5, 2003, Appellant called into work and notified Correctional Officer Rosa
8 Jimenez that he would not be in to work because he did not have child care for his four year old son.
9 Ms. Jimenez made an entry in the log book stating Appellant called in and had no babysitter.
10 Appellant was also absent on November 6, 2003, due to illness.

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12 2.7 Upon his return to work on November 7, 2003, Appellant filled out a leave request slip for
13 November 5, 2003, in which he wrote, “no child care for ill 4 year old son.” Appellant also
14 completed a leave request slip for November 6, 2003, in which he wrote, “high fever, body aches,
15 flu symptoms.” Appellant provided a doctor’s note for his absence on November 6.

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17 2.8 On November 8, 2003, Appellant’s supervisor, Sergeant Rick Duncan, signed Appellant’s
18 leave slips, approving his leave. Community Corrections Supervisor (CUS) Eric Missett
19 subsequently informed Sergeant Duncan that Appellant needed to provide medical verification for
20 his absence on November 5. Sergeant Duncan then contacted Appellant; however, Appellant
21 claimed that his absence on November 5 was due to lack of child care and not for illness.

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23 2.9 Both Appellant and Sergeant Duncan credibly testified that Appellant explained to Sergeant
24 Duncan that his son’s illness had nothing to do with him missing work and that he could not
25 provide medical verification because he had not taken his son to the doctor. Nevertheless, Sergeant
26

1 Duncan believed Appellant violated his medical verification requirement, and on November 10,
2 2003, Sergeant Duncan initiated an Employee conduct Report.

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4 2.10 Based on a preponderance of the credible evidence and Appellant's previous compliance
5 with the medical verification requirement, we find no reason to disbelieve Appellant's assertion that
6 his absence on November 5, 2003, was due to child care problems.

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8 2.11 On January 29, 2004, Ms. Littrell met with Appellant to discuss the allegation. Appellant
9 maintained that he called in on November 5 because he did not have child care, not due to the
10 child's illness, and he denied that he violated the department's policy on unscheduled leave.

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12 2.12 By letter dated March 11, 2004, Ms. Littrell notified Appellant of his reduction in salary
13 within his class of Correctional Officer 2, from Range 40, Step I to Range 40, Step G, effective
14 April 1, 2004, through April 30, 2004, inclusive. Ms. Littrell charged Appellant with neglect of
15 duty and violation of agency policy for failing to provide medical documentation as required by his
16 medical verification requirement when he returned to work following two days of unscheduled
17 leave, taken on November 5 and 6, 2003.

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19 2.13 Ms. Littrell was Appellant's appointing authority when the discipline was imposed. In
20 determining the level of discipline, Ms. Littrell reviewed Appellant's personnel file, including his
21 performance evaluations, and considered his ongoing issues with unscheduled leave. Ms. Littrell
22 also considered the impact Appellant's absences had on the institution and staff morale. Because of
23 the length of time Appellant had been complying with his medical verification requirement, Ms.
24 Littrell believed Appellant understood the expectations of the requirement. Therefore, Ms. Littrell
25 determined that a reduction in salary would send a message to Appellant that he needed to be
26 accountable for his use of unscheduled leave and adhere to the requirements of medical verification.

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III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues Appellant was placed on a medical verification requirement due to his excessive use of unscheduled leave. Respondent argues Appellant's superiors clearly explained to him the requirements related to medical verification and asserts Appellant understood the requirement to provide proper medical documentation for any illness related absence. Respondent argues Appellant wrote the words "ill 4 year old son" on his leave slip, which reasonably implies his absence was illness related. Respondent argues Appellant's history of absenteeism was costly to the department and impacted the morale of other employees who were forced to work extra shifts to cover for Appellant. Consequently, Respondent argues the department imposed the least amount of discipline necessary to impress upon Appellant the seriousness of his misconduct and argues a reduction in his salary was the appropriate sanction.

3.2 Appellant argues that the sole reason for the discipline in this case is because he wrote the word "ill" on his November 5, 2003, leave slip but contends the reason for his absence on that date was not due to his son's illness. Rather, Appellant asserts he was absent because of his inability to provide day care for his ill son and argues he has consistently maintained that the primary reason he did not report to work that day was because he lacked child care for his son. Appellant, therefore, argues he did not neglect his duty or violate the policy on medical verification requirement and asserts his appeal should be granted.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the

1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; [WAC 251-12-
2 240(1)]; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

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4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
5 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
6 of Social & Health Services, PAB No. D86-119 (1987).

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8 4.4 Willful violation of published employing agency or institution or Personnel Resources
9 Board rules or regulations is established by facts showing the existence and publication of the rules
10 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
11 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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13 4.5 The credible evidence presented establishes that Appellant called in and reported that he
14 would not be at work on November 5, 2003, because he did not have adequate child care for his
15 son. Although Appellant wrote that he did not have child care for his "ill 4 year old son," on his
16 leave slip, the preponderance of the credible evidence does not support that Appellant neglected his
17 duty or violated the agency's policy on unscheduled leave and medical verification requirements.
18 Appellant had already demonstrated his compliance with submitting the proper medical
19 documentation over a lengthy period of time, and he provided the necessary documentation for his
20 illness on November 6, 2003. In addition, Appellant's supervisor initially approved his leave
21 request, and when his supervisor later requested medical verification, Appellant clarified that his
22 reason for missing work was related to child care problems, not illness.

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24 4.6 Therefore, Respondent has failed to meet its burden, and the appeal of Joe Neal should be
25 granted.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Joe Neal is granted.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Busse Nutley, Vice Chair

Gerald L. Morgen, Member